

EXHIBIT A

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656. O'Neil described being asked to go to political fundraisers, though he stated that he never attended:

- Q. Have you ever attended or been asked to attend political fundraisers for any candidate?
- A. I've been asked to attend; I've never attended.
- Q. Are there particular candidates who stand out whose fundraiser Probation Department employees used to go to?
- A. Nothing that stands out. To be honest with you, I really don't like politics. I try to stay away from it completely. So I don't really engage in those kinds of discussions. If people were saying they were going to a fundraiser or something, I wouldn't even be interested in pursuing a conversation in that area.
- Q. Who are these people, even though you had little interest, that mentioned various fundraisers? And I mean Probation employees.
- A. I think some people in Dedham, maybe a Chief like -- Chief of Dedham District Court. The name escapes me. I've heard talks at Chiefs meetings about going to different fundraisers. I mean, nobody really comes to mind as saying, I am going to so and so's fundraising party tonight; you want to come? I mean, nobody would even engage me in a discussion like that that knows me.

Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 177-78.

657. Office of Community Corrections Regional Program Manager John Quinn testified that he was approached by Wall and asked to attend the Cahill fundraiser. Quinn said he did not want to attend the event, but still gave a donation check for \$100 to Wall.⁴⁷⁸

658. Independent Counsel was not able to ask Commissioner O'Brien if he raised funds for Petrolati and/or Cahill because he refused to cooperate with the investigation. He did specifically deny to the *Boston Globe* that he played any role in raising funds for Cahill. Deputy

⁴⁷⁸ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 100-103.

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Commissioner Wall flatly refused to cooperate with this investigation, declining to answer any questions, including whether he collected money from Probation Department employees for attendance at political fundraisers. Edward Ryan, under oath, denied soliciting funds for Cahill, although he admitted that he did “talk up” Cahill fundraisers.⁴⁷⁹

659. Based on the testimony by numerous witnesses (many of whom are old friends of O’Brien) that O’Brien, Wall, and/or Ryan were soliciting funds for Petrolati and Cahill, Independent Counsel concludes that, at a minimum, O’Brien and Wall did so.

660. In addition to fundraising for Petrolati and Cahill, one chief probation officer testified that Senator Marc Pacheco, a friend of his, asked him on more than one occasion to solicit contributions from among his fellow Probation Department employees, and he did so:

Q. Senator Pacheco asks you to help him sell tickets --

A. In the past he’s asked me if I could take tickets to sell to friends.

Q. Has he ever specifically asked you to see if anyone else in the Probation Department would be interested in attending?

A. Yes.

Testimony of Joseph Dooley, September 17, 2010 (Exhibit 106), at 49-50.

661. Senator Pacheco denied ever asking Dooley to raise funds among Probation Department employees.⁴⁸⁰ Independent counsel concludes that the testimony of the chief probation officer, who had no motive to incriminate himself, is more credible than that of Senator Pacheco on this issue.

662. The evidence reveals a culture in the Probation Department, beginning at the top with Commissioner O’Brien and Deputy Commissioner Wall, of ignoring the important

⁴⁷⁹ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 256, 261-62.

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restrictions placed on fundraising by public employees and in public spaces. It is especially troubling that the hierarchy of the Department solicited employees for contributions to politicians widely thought within the Department to be influential in hiring and promotion decisions, such as Representative Petrolati. The evidence collected unambiguously points to repeated violations of the law by O'Brien, Wall, and others, violations still within the limitations period of six years applicable to such offenses.

⁴⁸⁰ Testimony of Marc Pacheco, October 20, 2010 (Exhibit 125), at 92-96.

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OTHER INCIDENTS

I. THE HIRING OF O'BRIEN'S WIFE AND DAUGHTER BY THE DEPARTMENT OF THE TREASURY.

663. The *Boston Globe* reported that in July 2005, "45 probation employees – mostly senior managers – donated \$5,900 to state treasurer Cahill" and Cahill "hired [O'Brien's] wife," Laurie O'Brien, "to work in the State Lottery." The paper reported that O'Brien's daughter, Kelly O'Brien, is also employed by the Massachusetts Department of the Treasury.

664. A review of the Treasury's records confirms that Laurie O'Brien has been employed by the Massachusetts Lottery, which is a division of the Treasury, since September 21, 2005. Kelly O'Brien has been employed by the Abandoned Property Division of the Treasury since December 21, 2005.

665. Based on the evidence, Independent Counsel concludes that Commissioner O'Brien did in fact cause contributions to be solicited from Probation Department employees to Treasurer Cahill in an effort to assist his wife in obtaining a desirable position within that agency. A Probation Department employee, Edward Ryan, with childhood connections to Cahill further lobbied Treasury on Laurie O'Brien's behalf. The evidence strongly suggests, although current and former Treasury officials deny it, that these efforts by Commissioner O'Brien had the desired effect, assisting Laurie O'Brien in obtaining a position in customer service at Treasury, rather than a far less desirable position she had been offered as a night-shift computer operator.

666. Similar direct evidence has not been obtained with respect to Kelly O'Brien. However, given the timing of her employment, it is reasonable to infer that O'Brien's earlier efforts also played a role in her hiring by the same agency.

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A. Laurie O'Brien

667. Independent Counsel obtained documents concerning Laurie O'Brien's hiring by the Treasury. These documents mostly consist of emails among Michael Coughlin, Director of Human Resources for the Lottery; Scott Campbell, then Director of Operations for the Treasury (and friend of Edward Ryan); and Neil Morrison, then Chief-of-Staff for Cahill. All three were regularly involved in the hiring of employees within the Treasury.

668. There was no record of Laurie O'Brien submitting a job application, and witnesses could not recall when they first received her resume. A July 1, 2005 email from, refers to Campbell and/or Morrison having "recently" forwarded Laurie O'Brien along as a candidate for a position in the Lottery.⁴⁸¹ Accordingly, sometime before that July 1, 2005 date, either Campbell or Morrison received Laurie O'Brien's resume and sent it along to Coughlin.

669. The evidence pointed to Campbell as the person who initially referred Laurie O'Brien for employment. Morrison testified that he did not receive Laurie O'Brien's resume. , A spreadsheet maintained by Assistant Director of Human Resources for the Treasury, Eileen Glovsky, to track job applicants indicates that Laurie O'Brien was referred by "Scott." Under the circumstances, that is undoubtedly a reference to Scott Campbell. Campbell testified that he does not recall referring O'Brien, but conceded it was possible.⁴⁸²

670. Coughlin testified that he interviewed Laurie O'Brien for her position at the Lottery in June 2005.⁴⁸³ His undated notes, which he testified were from that interview, are

⁴⁸¹ A copy of the July 1, 2005 email accompanies this Report as Exhibit 80.

⁴⁸² Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 84-85; Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 66-67; Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 29-30, 38-39. Relevant excerpts from the testimony of Mr. Morrison, Ms. Glovsky, and Mr. Campbell accompany this Report as Exhibits 120, 110, and 99, respectively. A copy of the spreadsheet maintained by Glovsky accompanies this report as Exhibit 84.

⁴⁸³ Testimony of Michael Coughlin, September 2, 2010 (Exhibit 101), at 39-40. Relevant excerpts of the testimony of Mr. Coughlin accompany this Report as Exhibit 101.

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generally positive, though sparse. They state “good interview – good candidate for customer service – no to field work to start – promotions??”⁴⁸⁴

671. In the July 1, 2005 email, Coughlin indicated to Campbell and Morrison that he offered Laurie O’Brien a position as the “night shift computer operator” in the Lottery. Coughlin, Campbell and Morrison all testified that the night shift computer operator position was an undesirable one that was difficult to fill because of the overnight hours.⁴⁸⁵

672. Subsequently, there was a concerted effort within the Probation Department to help Laurie O’Brien obtain a more desirable position within the Lottery.

673. In particular, on July 6, 2005, shortly after Laurie O’Brien was offered the undesirable position of night shift computer operator, at least 34 employees of the Probation Department attended a Cahill fundraiser and donated at least \$100 each to Cahill’s campaign.⁴⁸⁶ These employees included high level Probation Department employees Jeff Akers, William Burke, Frank Campbell, Edward McDermott, Edward Ryan, Francine Ryan, Nicholas DeAngelis and Maria Walsh. The vast majority of these employees have no other history of donating to Cahill’s campaign, either prior to or after the July 6 fundraiser. Laurie O’Brien also donated \$200 to Cahill’s campaign on that day, sufficient to purchase tickets to the fundraiser for herself and the Commissioner.

674. Several of those contributing testified that there was an organized effort by senior Department management to have Probation Department employees attend the Cahill fundraiser.

⁴⁸⁴ A copy of Coughlin’s notes accompanies this Report as Exhibit 78.

⁴⁸⁵ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 56, 83-84, 88-89; Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 29-30, 32; Testimony of Michael Coughlin (Exhibit 101), September 2, 2010, at 28, 32, 45-46.

⁴⁸⁶ Information concerning these donations is available from the Massachusetts Office of Campaign Finance website.

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675. As quoted above, John Cremens testified that he was informed of the fundraiser for Cahill in the lunchroom at One Ashburton Place by either Commissioner O'Brien or Edward Ryan. *See supra*, ¶ 654.

676. Paul Lucci testified that he was told about the Cahill fundraiser by Fran Wall. *See supra*, ¶ 653. Regional Supervisor Nicholas DeAngelis also testified that he was encouraged to attend the Cahill fundraiser by Wall:

Q. Do you recall kind of was one person any more than another spearheading this effort or was it just kind of a group dynamic of we're going to go to the fund-raiser?

A. I got the call from Fran Wall and I did ask if the people who I was driving to the audit with were going and when he said yes, I said I guess I'll go.

Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 114-15.

677. Francine Ryan testified that a group of Probation Department employees from Western Massachusetts drove down together to attend the Cahill fundraiser.⁴⁸⁷ Frank Campbell also recalled being solicited for the Cahill fundraiser. *See supra*, ¶ 655.

678. Cahill received \$4000 in contributions from Probation Department employees who bought tickets to this fundraiser.

679. Around this same time and during the time when Laurie O'Brien was seeking employment from the Lottery, Edward Ryan, who encouraged Department employees to attend the Cahill fundraiser, was making calls on her behalf to Cahill's office.

680. Ryan, a family friend of Cahill, testified that, at the request of Commissioner O'Brien, he contacted Scott Campbell to recommend Laurie O'Brien.⁴⁸⁸ Ryan also testified that the Commissioner asked to him to inquire as to how Laurie O'Brien was progressing through the

⁴⁸⁷ Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 154-56.

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hiring process and he did so.⁴⁸⁹ Commissioner O'Brien was aware that Cahill had been Ryan's wrestling coach and the two were friendly.⁴⁹⁰

681. Campbell did not refute Ryan's testimony concerning his recommendation of Laurie O'Brien for a position in the Lottery; he claimed that he could not recall whether he had any conversations with Ryan concerning Laurie O'Brien's hiring within the Treasury.⁴⁹¹ Indeed, Campbell testified that he remembered next to nothing concerning Laurie O'Brien's hiring.⁴⁹² Campbell did testify, however, that if he had spoken to anyone about Laurie O'Brien's hiring, it would have been Edward Ryan.⁴⁹³

682. Neil Morrison corroborated Ryan's version of events. He testified that he was aware of Campbell's friendship with Ryan and assumed that Campbell was communicating with Ryan regarding Laurie O'Brien.⁴⁹⁴ Morrison told us that he had the impression that Campbell was approached by someone who asked him (Campbell) "to give her a hand."⁴⁹⁵ Morrison testified that he recalled both Campbell and Coughlin pushing for Laurie O'Brien to be hired, indeed, that Campbell was a "advocate" for her.⁴⁹⁶ According to Morrison, Campbell and Coughlin rarely agreed on hiring decisions, and he found it odd that they agreed in this instance and inquired more about Laurie O'Brien.⁴⁹⁷ Morrison testified that he learned "almost

⁴⁸⁸ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 244-46, 248.

⁴⁸⁹ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 249-52.

⁴⁹⁰ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 252.

⁴⁹¹ Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 18, 30, 43-46.

⁴⁹² Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 17-18, 26, 29-35, 39-45.

⁴⁹³ Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 43-44.

⁴⁹⁴ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 73-78, 101-102, 125.

⁴⁹⁵ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 55.

⁴⁹⁶ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 57-58, 60-62, 70-72, 128-129.

⁴⁹⁷ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 53-55.

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immediately” that Laurie O’Brien was O’Brien’s wife, that Coughlin had been friendly with Laurie O’Brien for years, and that Coughlin thought “highly” of her.⁴⁹⁸

683. Morrison testified that he raised this issue with Treasurer Cahill. Cahill was initially reluctant to consider Laurie O’Brien for a position, but Coughlin and Campbell persisted in their support for her and eventually convinced Cahill that there was a vacant position and that Laurie O’Brien was well qualified to fill it.⁴⁹⁹

684. Just days after the fundraiser, on July 13, 2005, Coughlin, Campbell and Morrison once again discussed hiring Laurie O’Brien. This time, instead of a position as a night shift computer operator, she was going to be offered a position in Customer Service, prompting Campbell to enthusiastically reply “Fantastic on Laurie O’Brien.”⁵⁰⁰ Campbell, Coughlin and Morrison all testified that a position in Customer Service was more desirable and easier to fill than a night shift computer operator.⁵⁰¹ Coughlin testified that he had hundreds of candidates to choose from for this position.⁵⁰²

685. Morrison stated that he was not aware of the timing of the fundraiser, but that Campbell probably was aware of fundraising activities during this time period.⁵⁰³ He agrees that the timing of the second position offered to Laurie O’Brien and the fundraiser was poor, and that it gives the appearance that something inappropriate was happening, although he believes Laurie O’Brien was hired on the merits.⁵⁰⁴ Morrison testified that if he had known Laurie O’Brien had

⁴⁹⁸ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 52, 57-58, 60-61.

⁴⁹⁹ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 65-70, 106-108, 110-11.

⁵⁰⁰ A copy of this email accompanies this Report as Exhibit 81.

⁵⁰¹ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 91-93; Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 32; Testimony of Michael Coughlin (Exhibit 101), September 2, 2010, at 31-32.

⁵⁰² Testimony of Michael Coughlin, September 2, 2010 (Exhibit 101), at 66-67, 79-80.

⁵⁰³ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 96-101.

⁵⁰⁴ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 95-96, 99-101.

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donated to Cahill's campaign while she was interviewing he would not allowed the donation to be accepted or would have had it returned.⁵⁰⁵

686. Even beyond the donations to Cahill, the hiring of Laurie O'Brien was irregular. Morrison testified that such a job offer should not have been made by the Lottery itself, because hiring was supposed to be centralized within the Treasury. He also that typically an offer letter is not sent to a candidate who has not first met with the Treasurer, and O'Brien had not done so when she received her offer.⁵⁰⁶ Morrison was clearly frustrated during his testimony that Laurie O'Brien's hiring did not follow Treasury's practices and procedures. He testified this was an ongoing problem with hiring for Lottery positions.

687. There are no further communications or documents concerning Laurie O'Brien's hiring and promotion until 2007. In an email dated June 14, 2007, Campbell wrote "I spoke with my contact regarding Laurie O'Brien and the thought of exploring any opportunities in Marketing were most exciting to her. Please let me know what your thoughts are."⁵⁰⁷ Coughlin testified that he did not know who this "contact" was, but that he thought it was "a little out of the norm" for a third party to be discussing Laurie's employment within the Lottery with Campbell.⁵⁰⁸ Campbell claimed not to remember to whom he was referring as his "contact."⁵⁰⁹ Morrison testified that the contact Campbell referred to in his email is probably Edward Ryan,⁵¹⁰ and this seems most likely.

⁵⁰⁵ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 128-129.

⁵⁰⁶ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 49-50, 110-111, 115-19.

⁵⁰⁷ A copy of this email accompanies this Report as Exhibit 82.

⁵⁰⁸ Testimony of Michael Coughlin, September 2, 2010 (Exhibit 101), at 55-57, 58-59.

⁵⁰⁹ Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 42-43.

⁵¹⁰ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 124-26.

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688. Despite all of this activity around Laurie O'Brien, Coughlin testified he did not receive any direction or pressure from anyone to hire or promote her. Morrison, however, did get the impression that she received extra attention.⁵¹¹ Campbell, as in his responses to most questions, claimed to be unable to remember the circumstances surrounding her hiring.⁵¹²

689. While there is no direct evidence that Ryan's calls to Campbell or the large number of well-timed campaign contributions from Probation Department employees helped Laurie O'Brien, the circumstantial evidence leaves no doubt that Laurie O'Brien's hiring was a result of these outside influences. Because this investigation is not focused on wrongdoing outside the judicial branch, Independent Counsel did not fully investigate this issue. The Court, however, may wish to forward the information presented in this Report to relevant executive branch officials for their review.

690. More importantly for present purposes, Independent Counsel concludes that Commissioner O'Brien, either directly or through his subordinates Wall and Ryan, solicited contributions to Cahill from his employees in the Probation Department in an effort to assist his wife in obtaining a desirable position within Treasury. O'Brien also asked his subordinate, Ryan, to intervene at Treasury on his behalf. The solicitation of contributions was in violation of the law and, moreover, an abuse of O'Brien's position of authority within the Department for personal gain.

B. Kelly O'Brien

691. We were unable to obtain significant testimony or documentary evidence concerning the hiring of Kelly O'Brien. Campbell testified that he does not recall anything with

⁵¹¹ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 121-22.

⁵¹² Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 67-70; Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 34-36, 39; Testimony of Michael Coughlin, September 2, 2010 (Exhibit 101), at 41.

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respect to her hiring.⁵¹³ Glovsky testified that she has no knowledge of Kelly O'Brien's hiring, but was likely on vacation at the time.⁵¹⁴ Counsel for the Treasury, Grace Lee, informed us in a telephone call that an individual named Vicki Williams likely was involved in hiring Kelly O'Brien, but that Williams was terminated from her employment with the Treasury. We subpoenaed Williams at her last known address, but were informed she moved sometime in July 2010 and have been unable to locate her at this time.

692. The Treasury has no record of a posting for the position Kelly O'Brien received, nor is there any record of her having been interviewed prior to being hired.⁵¹⁵

693. Documents produced by the Treasury provided some information with respect to Kelly O'Brien's hiring. In an email dated February 21, 2006, Glovsky and another employee of the Treasury note that she was a "surprise employee."⁵¹⁶ Interestingly, her application for employment is dated the same day as that email. (Glovsky testified this was not uncommon at the time). A compensation assessment, however, shows her date of hire as December 19, 2005.⁵¹⁷ Accordingly, it remains unclear how she was hired and under what circumstances, though this minimal information indicates that her hiring was not in the ordinary course.

694. Morrison testified that he was not involved in Kelly O'Brien's hiring (which he found to be unusual now and at the time). He learned from Campbell that she was seeking employment.⁵¹⁸ He told us that the dates on the documents related to her hiring do not make

⁵¹³ Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 26, 45.

⁵¹⁴ Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 49-50.

⁵¹⁵ Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 46-47, 54-56, 66-67.

⁵¹⁶ A copy of this email accompanies this Report as Exhibit 83; Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 33.

⁵¹⁷ Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 38-39. A copy of Kelly O'Brien's employment application and compensation assessment accompany this report as Exhibit 79.

⁵¹⁸ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 129-35, 139-40.

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sense given how hiring was supposed to work. While he does not know if there was anything improper in her hiring, he believes that ordinary hiring protocols were not followed.⁵¹⁹ He did not recall any push back on her hiring as had been the case when Laurie O'Brien initially applied for a Lottery position.⁵²⁰

695. Edward Ryan testified that he believes he contacted Scott Campbell to recommend Kelly O'Brien for a position within the Lottery at the Commissioner's request.⁵²¹ Probation Department employees, only a few months prior, had made a large number of donations to Cahill's campaign. At this time, therefore, there is evidence to indicate that her hiring may also have been driven by efforts of Probation Department employees. More importantly, the same evidence suggests that Commissioner O'Brien solicited political contributions from his employees in order to assist his daughter's hiring. Such evidence, however, is less compelling than in the case of Laurie O'Brien.

II. THE DISCIPLINING OF ASHLEY LOSAPIO

696. In providing examples of alleged instances where "politically connected employees with histories of alleged misconduct or sloppy work avoided serious career fallout," the *Boston Globe* discussed the situation of Associate Probation Officer Ashley Losapio, the daughter of First Justice Paul Losapio of the Uxbridge District Court.

697. The *Globe* reported that "Worcester police fruitlessly complained to O'Brien in 2008 that associate probation officer Ashley Losapio, the stepdaughter of a judge, had compromised an investigation by leaking information to criminals." According to the *Globe*, Ms. Losapio admitted to having contact with known criminals and informing them of people she

⁵¹⁹ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 136-41, 143-45.

⁵²⁰ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 129-31, 133-35.

⁵²¹ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 247-48.

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saw come into the court where she worked. Worcester Police Officers, the *Globe* reported, informed Commissioner O'Brien that Losapio "is not a suitable person to serve this community as a probation officer" and believe she continues to associate with known criminals. The *Globe's* story concluded that while Losapio "has been transferred," "[s]he continues to work for probation, and her pay has increased by nearly \$3,000 a year." The implication of the story is that Losapio should have been terminated from Probation, and was not only because of her connections.

698. Losapio was appointed Associate Probation Officer and assigned to the Worcester Superior Court effective July 24, 2006 with a starting salary of \$33,017.00. Employee information provided by AOTC shows Losapio's current salary is \$37,518.75.

699. We spoke to members of the Worcester Police Department concerning Losapio. On June 11, 2010, we met with Deputy Superintendent Edward J. McGinn, Lt. Thomas Gaffney and Sgt. Eric Boss. They confirmed the information reported in the *Globe* with respect to Losapio's association with known criminals. They also provided us with their file concerning Losapio which included a memorandum to the chief probation officer for the Worcester Superior Court, Thomas Turco, and letter to Commissioner O'Brien that detailed Losapio's activities. Copies of this letter and memorandum were also located in Commissioner O'Brien's files.⁵²²

700. The letter detailed, and it was confirmed during the interview with Worcester Police, that Losapio has been a known associate of several drug and gun dealers who have been the subject of Worcester Police and DEA investigations.

⁵²² A copy of the memorandum from Lt. Thomas J. Gaffney to CPO Thomas Turco, dated April 4, 2008, accompanies this Report as Exhibit 85. A copy of the letter from Det. Captain Edward J. McGinn to Commissioner O'Brien, dated April 16, 2008, accompanies this Report as Exhibit 86.

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701. The memorandum and letter state that through wiretaps Worcester Police intercepted discussions between these individuals recounting that they had received helpful information from “Ashley L.” According to the reports, during one conversation they discussed contacting Ashley L. to get information on their case.⁵²³ One of them stated during that conversation that “[he] saw Shorty in court, and that she gave him a signal where he was going to be alright.” Worcester Police know “Shorty” to be the moniker of Ashley Losapio.⁵²⁴

702. During our interview with the Worcester Police, they stated that they believe Losapio notified her criminal associates when witnesses might be testifying before the grand jury and, as a result, they appeared at the courthouse to intimidate witnesses.⁵²⁵ They also stated that Losapio used Probation Department databases to locate an individual owing money to a used car dealer, whom they believe was subsequently accosted by Losapio’s criminal associates.⁵²⁶

703. On April 4, 2008, Worcester Police met with Chief Probation Officer Turco to inform him of their investigation and desire to speak with Losapio. “It was explained [to Turco] that the targets of this investigation are very violent and have access to numerous firearms and large quantities of drugs. It was also explained that if the wrong information was given to the targets of this investigation that it could result in someone being seriously hurt or murdered.”⁵²⁷ The Worcester Police reported that Turco was helpful.⁵²⁸ During their meeting Turco called

⁵²³ A copy of the letter from Det. Captain Edward J. McGinn to Commissioner O’Brien, dated April 16, 2008, accompanies this Report as Exhibit 86.

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⁵²⁵ Informal Interview of McGinn, Gaffney and Boss.

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Christopher Bulger, counsel for OCP, and asked that Losapio be suspended. Police described Bulger as advising them that Losapio could not be suspended without a hearing.⁵²⁹

704. Worcester Police reported that, later that same day, they interviewed Losapio. During that interview, Losapio admitted to knowing and socializing with the known criminals.⁵³⁰ She admitted that she discussed with them who she had seen in court (but reasoned it was “public” information anyway). She admitted to looking up information relating to the used car purchaser.⁵³¹ Losapio also reportedly admitted to police that she looked up the criminal histories of her associates on her work computer. The Worcester Police reported that Losapio admitted that she knew what she was doing was wrong and that she was aware of the criminal activities of the individuals with whom she associated, but reasoned that “it’s all right if it’s not around [her].”⁵³²

705. On April 9, 2010, Bulger sent a letter to Losapio concerning her interview with Worcester Police. The letter informed Losapio, “[b]ased upon preliminary information you are excluded from courtroom work and are instructed to perform limited office duties within the probation office. In addition, your Court Activity Record Information (CARI) password will be suspended, pending the outcome of this investigation.”⁵³³

706. On April 16, 2008, Deputy Commissioner Tavares sent a letter to Losapio confirming her “voluntary transfer from the Worcester Division of the Superior Court to the

⁵²⁹ Informal interview of McGinn, Gaffney and Boss.

⁵³⁰ Informal interview of McGinn, Gaffney and Boss. A copy of the memorandum from Lt. Thomas J. Gaffney to CPO Thomas Turco, dated April 4, 2008, accompanies this Report as Exhibit 85. A copy of the letter from Det. Captain Edward J. McGinn to Commissioner O’Brien, dated April 16, 2008, accompanies this Report as Exhibit 86.

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⁵³³ A copy of the April 9, 2010 letter from Bulger to Losapio accompanies this Report as Exhibit 87.

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Westborough Division of the District Court Department effective April 16, 2008. You shall remain at the Westborough District Court pending the outcome of your investigatory review.”⁵³⁴

707. On April 25, 2008, Nicole Pangonis, Deputy Legal Counsel for OCP, informed Losapio via letter that she was placed on administrative leave with pay as of that date.⁵³⁵ The letter also reminded Losapio that her investigatory review was scheduled for April 30, 2008.⁵³⁶

708. On May 27, 2008, Bulger transmitted to Michael Manning of NAGE the “agreed upon discipline in the Ashley Losapio matter.”⁵³⁷ That letter attached the findings from Losapio’s investigatory review, in which Losapio confirmed the information she told police.⁵³⁸ The findings concluded that Losapio acknowledged her wrongdoing, was cooperative in both the OCP and police investigations, accepted responsibility for her actions, “appeared to be genuinely contrite,” and “[c]onsistent with the objectives of the Trial Court’s progressive discipline policy, Ms. Losapio ... expressed a willingness to conform to the high standard of conduct expected of an Associate Probation Officer.”⁵³⁹ The findings also noted that Losapio had no other disciplinary action in her employment record.⁵⁴⁰

709. Based on those findings, the following disciplinary actions were taken against Losapio: (1) two week suspension (one week without pay, one week deducted from accumulated vacation time)⁵⁴¹; (2) permanent assignment to the Westborough Division of the District Court Department; and (3) her “CARI password, which is presently suspended, shall be reinstated upon

⁵³⁴ A copy of the April 16, 2008 letter from Tavares to Losapio accompanies this Report as Exhibit 88.

⁵³⁵ A copy of the April 25, 2008 letter from Pangonis to Losapio accompanies this Report as Exhibit 89.

⁵³⁶ April 25, 2008 letter from Pangonis (Exhibit 89).

⁵³⁷ A copy of the May 27, 2008 letter and disciplinary findings accompanies this Report as Exhibit 90.

⁵³⁸ May 27, 2008 letter and disciplinary findings (Exhibit 90).

⁵³⁹ May 27, 2008 letter and disciplinary findings (Exhibit 90).

⁵⁴⁰ May 27, 2008 letter and disciplinary findings (Exhibit 90).

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the recommendation of the supervising chief probation officer. Thereafter, the chief probation officer shall have the discretion to restrict and/or monitor Ashley Losapio's use of the CARI system as deemed necessary."⁵⁴² Losapio accepted and agreed to both the findings and the discipline.⁵⁴³

710. Worcester police informed Independent Counsel that they have never heard back from the Commissioner's office regarding Losapio, but they believe that she is still socializing with the individuals involved in criminal activity. The provided us with Facebook screen shots showing photos of Losapio associating with those individuals.⁵⁴⁴

711. Legal Counsel for the Probation Department, Christopher Bulger, testified that he believed the punishment Losapio received was commensurate with her actions. Bulger told us that it is difficult to maintain a termination of a union employee such as Losapio. While in this instance she was suspended from work, per the Trial Court's progressive discipline policy, if she incurred another violation then there would be more solid grounds for termination.⁵⁴⁵

712. On the basis of the available evidence, Independent Counsel concludes that termination of Losapio was certainly justified. It is inconceivable that a responsible private sector company would continue the employment of an employee who knowingly used company computers to assist her criminal friends. It must therefore be even more unreasonable for an employee of a public safety and law enforcement agency to remain employed under such circumstances, particularly where there is no indication that she has terminated her affiliation with a known criminal element. Independent Counsel is also concerned by the failure of Legal

⁵⁴¹ Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 135-36.

⁵⁴² May 27, 2008 letter and disciplinary findings (Exhibit 90).

⁵⁴³ May 27, 2008 letter and disciplinary findings (Exhibit 90).

⁵⁴⁴ Informal interview with McGinn, Gaffney and Boss.

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Counsel for Probation, Christopher Bulger, to have made subsequent inquiry of Losapio or her superiors regarding her compliance with the terms of her discipline. Nonetheless, Independent Counsel acknowledges that, as Bulger testified, union issues, and the discipline imposed in other situations, may have tied Probation's hands. These questions warrant further investigation which was beyond the resources and timeframe of this investigation..

⁵⁴⁵ Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 131, 136.

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FOLLOW-UP AND OUTSTANDING ITEMS

While Independent Counsel undertook to complete a comprehensive investigation, due to time and resource constraints there are discrete areas that remain outstanding and that should be completed.

713. On Tuesday, November 2, 2010, Manager of Intergovernmental Affairs Maria Walsh produced a folder labeled “1998” which contained additional Sponsor Lists, presumably from that year. We have not yet analyzed those lists and they are not considered as part of the Report.

714. According to the testimony of various witnesses, there are several judges who contacted Chief Justice Mulligan to raise concerns about the hiring and promotion process for Probation Department employees. Those judges include Judge Elizabeth LaStaiti and Judge Catherine Sabaitis. We did not interview or seek testimony from those judges.

715. Independent Counsel took testimony from Executive Director of the Office of the Community Corrections, Stephen Price, and his Deputy Director, Patricia Horne. Price stated that he received calls from legislators offering recommendations for candidates and Horne testified that for every interview on which she sat for an OCC position, she received names of recommended candidates. Both Price and Horne, however, testified that the names of recommended candidates were provided only to enable the interviewer to inform the candidate that someone had made a recommendation on their behalf. Price is a friend of Commissioner O’Brien’s and has spoken to O’Brien several times per week since he was suspended.⁵⁴⁶ Because for at least some purpose, names of recommended candidates were given to interview panels, and because Price and O’Brien have a close relationship, the claim by Price and Horne

⁵⁴⁶ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), 143-44.

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that hiring in OCC was not compromised is at least questionable and probably untrue. Other witnesses within OCC who may possess relevant information have not yet been interviewed.

716. Independent Counsel requested images of the hard drives of the Probation Department computers issued to Deputy Commissioners Francis Wall and Elizabeth Tavares. We are awaiting receipt of those images and accordingly have not analyzed them or reviewed the documents and emails contained on them.

717. Independent Counsel received images of the hard drives of Commissioner O'Brien, Manager of Intergovernmental Relations Maria Walsh and Deputy Commissioner Christopher Bulger. Independent Counsel reviewed the active Word, Word Perfect, Excel and pdf documents found on Walsh's and Bulger's computers. (O'Brien did not have any active files on his computer). We have not yet reviewed any other active files, such as websites, and have not yet reviewed any inactive or deleted files on any of these hard drives.

718. Independent Counsel was informed late in the investigation that there is a server controlled by AOTC that contains Probation Department files. We have not searched that server for relevant documents.

719. Regional Supervisor Mark McHale and Chief Probation Officer Mark Prisco, along with several other Probation Department employees, were deposed in the discrimination matter of *Brown, et al. v. O'Brien, et al.*, Civ. A. No. 07-3552, pending in Suffolk Superior Court. We have not yet reviewed those transcripts for their relevance to this investigation.

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CONCLUSION

This Report, while substantial, is incomplete. Many avenues of obvious inquiry could not be fully explored given time and resource constraints. For example, Independent Counsel was mindful that this investigation was focused on the Probation Department, not other state agencies and not on the Legislature. Legislative conduct was not fully explored except as immediately relevant to Probation hiring. Hiring and promotion practices in other state agencies and departments was beyond the scope of the investigation except as specifically relevant to Commissioner O'Brien. Accordingly, many questions remain unanswered as of this writing.

Independent Counsel is realistic that recommendations to state agencies as regards candidates for initial hire or promotion are not unique to Probation. Indeed, even as to Probation, such recommendations are neither inappropriate nor inconsistent with fairness and objectivity in and of themselves. This investigation, however, revealed a degree of abuse and systemic corruption in hiring and promotion that cannot be ignored, and which as implemented, became an obstacle to the very principles of hiring articulated in Trial Court policies. That extent of interference with merit hiring and promotion transformed a credible process into a patronage hiring machine. However well-oiled, that machine no longer serves the public interest.

Respectfully submitted,

Paul F. Ware,
Independent Counsel

Dated: November 9, 2010